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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 566

GRACE TRENT, ET AL.,

Appellants,

vs.

LESTER HUNT, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

STATEMENT AGAINST JURISDICTION.

GEORGE N. BEAMER,
Attorney General of Indiana;
WALTER O. LEWIS,
URBAN C. STOVER,
Deputy Attorneys General of Indiana;
RALPH HIMELICK,
Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 566

GRACE TRENT, LUCY McKEE, FRANK A. JULIAN, JOHN C. RAINBOW, DENNIS M. DeMARS, ERNEST POTTER, EDWIN KLEINE, JAMES T. WOOD, EDWARD F. EDINGER, AND HARRY J. DYKE,

Appellants, Plaintiffs Below,

vs.

LESTER HUNT, SCOTT ADAMS, JOHN J. CHRISMAN, EDWIN JOHNSTON, RALPH HIMELICK, ATTORNEY GENERAL OF THE STATE OF INDIANA; M. CLIFFORD TOWNSEND, HENRY F. SCHRICKER, ROY NELSON, JAMES R. CARTER, PRESTON GATES, CLAIRE CURRY, AND RAYMOND STEELE,

Appellees, Defendants Below.

APPEAL FROM DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

STATEMENT OF HUNT, ET AL., APPELLEES, DISCLOSING THEIR GROUNDS AGAINST THE JURISDICTION OF THE SUPREME COURT.

A Statement of Facts.

We believe it may aid this Court to understand our grounds opposing any appeal if we set out at the forepart of our statement quite fully the material facts as we under-

stand them, out of which grew this controversy, that the District Court was called upon to decide.

Connersville is the county seat of Fayette County, Indiana, with a population of about 12,000, located in a farming district, with some manufacturing industries, about 50 miles southeast of Indianapolis. It is a town of home owning people and has a reputation of excellent public schools, churches, and civic pride.

In June 1940, Grace Trent, Lucy McKee and other women belonging to a small company of Jehovah's witnesses, were canvassing part of the town of Connersville in the sale of books, pamphlets, and phonograph records published by the Watchtower Bible and Tract Society of Brooklyn, New York, and were advocating their belief on religion and government as set out in such pamphlets. There was considerable opposition to their activities because their views and the material they were selling contained provoking criticism of Christian ministers, and the patriotic exercises required by law in the public schools, and of the American Government, its courts and its institutions. Many of the citizens believed their activity was calculated, if not designed, to incite trouble.

It was a poor time to be telling the citizens that Satan was the invisible ruler of Great Britain and the United States, and that the American Government had been weighed in the balance and found wanting and that the public schools' exercises were "compelling little children to violate God's law." There were other provoking expressions in the books against churches and American institutions which the citizens did not want forced upon them.

As a result of an avowed determination of Trent and others to continue their activities, and in view of a rising tide of resentment by the citizens, a group of business men including some American Legion members, invited Grace Trent and her group to meet with them, and go over the

pamphlets and see what the trouble was. Such a conference was held in the American Legion home. The men examined the pamphlets and heard the records. The tract called "Government and Peace" was especially objectionable to a number of people, who believed its general tenor might be subversive. The men advised the Jehovah's witnesses that their further activities might lead to a disturbance, and it would be prudent to discontinue the distribution of certain pamphlets which were pointed out as especially objectionable.

The next day after this conference, the Jehovah's witnesses appear to have redoubled their activities in putting out the objectionable matter, and the men who had counseled them, including Appellees Nelson, Carter and Gates, sought out the women as they were going from house to house, and tried to persuade them again that a continuation of their canvassing, and the advocating of their views might lead to trouble, but the women insisted on going ahead in their course. All this was brought to the attention of the Prosecuting Attorney, Chrisman, by various complaints, and, believing that certain statutes had been violated he prepared affidavits which were sworn to by Scott Adams, Deputy Sheriff of Fayette County, and the women were placed under arrest. After further investigation additional affidavits were filed. Pleas of guilty were entered in the Circuit Court by three of those charged with the offenses. Trent and McKee plead not guilty. The Appellants' brief says that the pleas of guilty were entered because of threats and duress, but that is a mistaken assertion. Later on, the trial of Trent and McKee before a jury in the Circuit Court resulted in their conviction and a sentence to the Women's Prison. After some delay by their attorneys, an appeal was taken by the two women to the Supreme Court of Indiana from the judgment of the conviction, and an appeal is now

pending in the Supreme Court which has jurisdiction on appeal of criminal actions. The trial in the State Court lasted a week. The court room was crowded and considerable feeling was engendered. A group of Jehovah's witnesses from other states attended the trial. At the conclusion of the trial, after dark, when the out of state Jehovah's witnesses started to Ohio and other places of their residence, in their automobiles, some hoodlums followed them to the edge of town and threw vegetables and jeered at them and attacked some of them. It was a most regrettable disturbance. No disorder had occurred in the Court House. Appellants in their statements have referred to this disturbance in a most exaggerated way. To separate the facts from the misstatements would require reference to the evidence which is not now available and would extend this statement to an unreasonable length. Every assertion in Appellants' statement about any participation of any Appellee in this disturbance is a mistaken assertion not supported by the evidence. The Court's finding which is set out as an appendix hereto sets forth the true facts. The Judge, Prosecuting Attorney, Sheriff and Deputy acted only in line with their official duty. The other Appellants were interested only in preventing disorders. An examination of the Watch Tower accounts in "Consolation" and "Kingdom News" and other publications which purport to describe the "mobs" that have set on groups of Jehovah's witnesses in various places, will disclose the fact that all the mobs appear to use the same words, the same stock filthy epithets that Appellants' witnesses ascribe to the "mob" in the Connersville disturbance.

The thing to be kept in mind about this disturbance is that no one of the Appellees had any part in it in any way. Such was the finding and judgment of the judges who constituted the court, and who met the witnesses face to

face and heard and sifted and weighed their testimony. Judge Evans observed to the plaintiff's attorney near the close of plaintiff's case at the trial (R. —): "You haven't got one scintilla of evidence against them so far."

The trial in the State Court ended and the disturbance occurred on September 24th, 1940. Following this trial and disturbance, and further threats by and against Jehovah's witnesses, a citizens committee—selected from various civic and religious organizations, such as churches, schools and lodges—was formed to advise with the officers and to empower assistance in preventing other breaches of the peace (R. —). The assertion at the foot of Page 16 in the typewritten copy of Appellants' statement that the purpose of this committee of leading citizens was inimical to the Jehovah's witnesses, is entirely incorrect. The purpose was to prevent lawlessness against, as well as lawlessness by Jehovah's witnesses in the county. There was no feeling against any legitimate religious activity or any desire to curb any freedom of expression. There was a feeling among some citizens that the community was being used to exploit a commercial publishing enterprise which had already resulted in trouble in the public schools, and that the general tenor of the activity as directed by outsiders ran counter to the national defense program. Certain School laws of Indiana are set out as Appendix "D" herewith which require patriotic services in Public Schools.

In December 1940 the Appellants herein filed their complaint in the District Court of Indiana, alleging that the defendants (Appellees herein), that is, the judge of the court, the sheriff, the deputy sheriff, the prosecuting attorney, with Nelson, Carter, Gates, Curry and Steele had entered into a conspiracy to illegally prosecute Trent and McKee, and other Jehovah's witnesses in such pending action. The Governor and Attorney General were also

made parties to the suit. The controlling theory was the conspiracy charge, and, that the statutes under which McKee and Trent were being prosecuted by the conspirators were being unconstitutionally applied, and thereby the appellants were being deprived of freedom of speech and of their right of worship. Not much was said or argued about the validity of the statutes themselves. It was the improper application of the statutes that was urged at the trial.

The plaintiffs below (Appellants here) demanded a temporary injunction by a three judge court. A hearing was had on this application for an interlocutory injunction on January 13, 1941. The case was presented largely by affidavits although Trent and McKee gave oral testimony and some phonograph records were played by plaintiffs.

On March 17, 1941, the court made a finding, and filed a memorandum denying the interlocutory injunction. Appendix "A" following this statement is a copy of such memorandum. No appeal was taken from this interlocutory decision of the court.

An answer was filed to the bill of complaint and the case was then set down for trial on its merits, and a pretrial conference was held as suggested by the court.

There was no disturbance of the peace from September 1940 until April 6, 1941. On that day, Palm Sunday morning, a caravan of about seventy-five (75) Jehovah's witnesses in automobiles from Ohio, West Virginia, and Kentucky arrived from Cincinnati in Connersville with a station wagon of the objectional pamphlets, books and phonograph records, in charge of their "Zone Servant", John C. Rainbow, an appellant, and began a systematically planned canvass, selling their pamphlets and playing their records. Many of those in this party (including Rainbow) had been at the trial of Trent and McKee in September. They knew of the feeling against their activities and evidently

expected and courted trouble. Young children (a two year old baby) and some elderly people were brought along to give a dramatic effect to their arrests and the publicity they expected to utilize from it. (See "Theocracy" Pamphlet P. 44).

Complaints were made by telephone, citizens called personally on the prosecutor and sheriff, and, after advising with some citizens who feared another disturbance would be incited, and believed the criminal laws had again been violated, arrests were ordered and the entire group of seventy-five (75) were taken into custody and given the best possible care under the circumstances. The assertions in Appellants' brief about assaults on and other mistreatments of these people while in custody are not true. The young children of the group, nine of them, were turned over by the court to the County Welfare Workers who cared for them and returned them to their homes.

On April 9th the Grand Jury of Fayette County being in session, returned indictments against those still in custody. On April 12th, they were all released on bond. The criminal case against them is undisposed of, awaiting a State Supreme Court ruling in the Trent-McKee appeal (R. —).

As to this April 6th activity, those engaged in it attempted to explain to the District Court that the coming of the seventy-five (75) people from three or more states at that time was a mere coincidence. (R. —). However, the evidence contains maps prepared in advance, of sections of Connersville, designating where each salesman should carry on his work. (See R. — and Court's finding No. 21, Appendix "B" of this brief) An intercepted letter from one of the party also disclosed that the invasion by the out of state people was deliberately planned. It seems to have been designed by its leaders in retaliation, or, to provoke the

people of Connersville, and if possible, the Appellees, to some action that could be used against Appellees in this case which was coming up for trial later on in the month. Nothing in that Palm Sunday invasion, so far as the leaders of it are concerned, had in it any element of religious worship, or freedom of speech. It was more of an entrapment scheme.

In the course of the trial the plaintiffs' counsel was giving his reasons for wanting to play certain phonograph records to show the "activity" of his clients on April 6th, and "to show that this statute had been wrongfully construed and applied" to the activity. The court interrupted to say that the plaintiffs were prosecuting a case against certain individuals——

> "You have a criminal case that has proceeded to judgment and an appeal has been taken—and the charge seems to be that seventy-five (75) of Jehovah's witnesses wanted to practice their religion so they went to the neighborhood town and got out some papers and they were practicing their religion by telling that all other religious are a snare."
>
> "Mr. Covington: That's not in the evidence.
>
> "Judge Evans: These books that I've been reading say that. These documents say that. And, furthermore, state that the saluting or salutation of the flag is in the same class—which, evidently, with these same people, which no one approves of—or ought to approve of—get so excited over that thing, that the agitator and the fellow that comes out there to wave the flag in their face, knowing that it caused a red-hot fight the last time—well, that fellow will go out there again. Now, sometimes we have that sort of thing at baseball games, where some town beats the other one badly, and they go over there to get even with them. But in this case you come back with seventy-five strong on the Sabbath and bring in people circulating literature regarding your views on what you call religious service.

> Religious service consists of going and telling the Catholics that they are Satan's representatives, and that all other religions are a snare, and that no man that is really true would worship that or would salute the flag—and that arouses—it wouldn't probably arouse certain individuals—to the point where they begin to throw them out and they resort to practices that are wholly improper, regardless of what these fellows are or what they may think they are" (R. —).

The trial before the District Court lasted almost a week beginning April 28th. The court on June 12 made a finding (Appendix "B" this statement) and entered a decree dismissing the case for want of equity. A memorandum opinion was also filed (Appendix "C" this statement).

The court had two good opportunities to see and hear the witnesses and parties in this case, and to consider any conflicting testimony. The finding of facts by the court ought not be questioned.

The fundamental weakness in the appellants' suit—aside from the failure to show any conspiracy or any unlawful participation on the part of the appellees—was that there was no equity in their case. They came into court asking aid, but asserting all the time that they would not obey any law or court order, which in their own judgment conflicted with their own views.

This Court will understand that the source of the Connersville trouble lies much deeper than the desire of anyone to prevent a distribution of some pamphlets. Peace loving citizens are not going to have the privacy of their homes continually invaded by strangers who try to tell them that their favorite minister, or the priest who baptized their children, is an emissary of Satan, and that the required patriotic school exercise is pure idol worship and condemned by the law of God, or that it is wrong to hold a position in government service, or that their court mis-

construed the Federal Constitution because the Judges were ashamed to acknowledge God as a Supreme Being.*

When the average American hears the bugle call for defense or war in his ears, he pays some attention to it, and does not care to be lectured about the sin against God of serving the country in an armed capacity. As Justice Holmes once observed in *Laurel Hill* v. *City*, 216 U. S. 358, 365, "Tradition and the habits of a community count for more than logic".

No sort of court writ is going to make people tamely submit to have forced on them lectures or insulting reading matter which is *per se* provocative, and is bound to disturb the peace and good order of their society.

It is easy to understand why the activities of the Jehovah's witnesses are considered by many citizens to be subversive and likely to incite trouble. The appellants regard the United States government simply as a mere man-made institution whose end is not far off. They refuse to participate in it. They will not serve the country either in a civic or armed capacity. As ordained ministers they claim exemption. The present form of government, which is responsible for our American way of life, is doomed to destruction they declare, not by some European power, but nevertheless, it is doomed, and they look forward with hope to that end.

It may be that the more acute students of history see in this movement a harmless vagary of a few conscientious folks, but the ordinary citizen who has a real affection for his government can not see it that way. He takes them at their word. He sees that appellants' doctrine, if generally accepted and carried to its logical end, would mean a weak-

* Intolerance, p. 41; Uncovered, p. 55; Government and Peace, pp. 28, 31, 38, 52; God and the State, pp. 22-25; Conspiracy Against Democracy, pp. 20, 22, 23; Theocracy, p. 44.

ening and the ultimate disintegration of the American form of democratic government.

Points Against Jurisdiction.

1.

The grounds upon which this Court will entertain an appeal to review the judgment below under said Section 266 is that the statutes which were the basis of the criminal action in the State court are *unconstitutional* on their face. The thing appellants sought to enjoin in the District Federal Court was the action of the judge of the State circuit court, and the prosecuting attorney, and the sheriff and others from *applying the statutes* in question *in an unconstitutional way* to the conduct of the defendants Trent and McKee, and other Jehovah's witnesses. Such an issue does not come within the meaning of Section 266. The validity of the statute itself must be the grounds of the appeal to this Court. This was recently declared to be the necessary construction of Section 266 in *Phillip, Governor, et al.* v. *United States of America, et al.*, 61 S. Ct. 480. See also *Green* v. *Phillips Petroleum Co.*, 119 F. (2d) 466.

The presumption is that the statutes are valid. The Circuit Court of the State held them to be valid. Although the complaint and the brief on the Jurisdiction of that court mentions the unconstitutionality of the statute, it is clear that the controlling theory on which the case was tried was the *unconstitutional application* of the statutes.

In the first paragraph of the Court's Memorandum, the case on the question of unconstitutionality of the statute is clearly stated as follows (R. —).

> "Per Curiam. The plaintiffs in this action are seeking to enjoin the defendants from enforcing three (3) certain criminal statutes in the State of Indiana, alleging 'that each of the three above described state statutes is unconstitutional and void, as construed

and applied by defendants against plaintiffs because, as so construed and applied, each of said statutes *has been used and will be used unlawfully to deny and deprive plaintiffs* and others of Jehovah's witnesses of their 'civil rights' of freedom of speech, of press, of assembly, and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1'." (Italics added.)

Further in the opinion it is stated:

"It is the contention of plaintiffs that the state statutes attacked by them *are unconstitutional, and void, as construed and applied by defendants,* and that, therefore, they are being deprived of their rights under the Constitution and laws of the United States by the enforcement of such statutes in the manner in which they allege such statutes are being enforced and threatened to be enforced by the defendants." (Italics added.)

2.

Section 379 U. S. C. A., provides that the writ of injunction shall not be granted to stay proceedings in a State court except in a bankruptcy proceeding. This is settled in *Hill* v. *Martin,* 296 U. S. 393 and *Watchtower Bible and Tract Society* v. *City of Bristol,* 24 Fed. Supp. 57, affirmed 305 U. S. 572, in which this Court cites—*In re Sawyer,* 124 U. S. 200, 210, 211; *Fenner* v. *Boykin,* 271 U. S. 240. See also *Kohn* v. *Central Distributing Co.,* 306 U. S. 531.

The following cases are also in point:

Harkrader v. *Wadley,* 172 U. S. 148;
Gilchrist v. *Interborough,* 279 U. S. 159;
Beal v. *Missouri Pacific Rrd.,* 61 S. Ct. 418;
Railway Commission of Texas v. *Pullman Co.,* 61 S. Ct. 643;
Green v. *Phillips Petroleum Co.,* 119 F. (2d) 466, which follows the *Pullman* case, *supra.*

3.

The privileges that grow out of the doctrine of religious freedom and free speech necessarily have their limits. As Chief Justice Hand of New York recently said in *National Labor Rel. Bd.* v. *Federbush Co., Inc.* (July 13, 1941—C. C. A. (2d) Cir.), 10 L. Wk., Sec. 2—2075: "The privilege of free speech like other privileges, is not absolute—it has its seasons". See also *Schenck* v. *United States,* 249 U. S. 47.

This rule requires no reconsideration in this Court because it has been settled with respect to the claim of the Jehovah's witnesses, as well as other groups, who have urged their religious beliefs or religious activities as a defense to charges of law infraction.

Reynolds v. *United States,* 98 U. S. 145, 166;
Davis v. *Beason,* 133 U. S. 333;
Corp. of Mormon Church v. *United States,* 136 U. S. 1;
Hamilton v. *Regents of Univ. of Cal.,* 293 U. S. 245, 256;
Cantwell v. *State of Connecticut,* 310 U. S. 296;
Minersville v. *Gobitis,* 310 U. S. 586.

4.

There was no equity in the appellants' case that called for the extraordinary remedy of injunction. The court's finding shows this. The suit was simply a collateral assault on a State court judgment then pending on appeal in the State Supreme Court.

The appellants presented their case in the District Court as though it was a rehearing of the State Circuit Court trial. The presiding Judge expressed it—"This thing we are doing is really a trial of a trial".

The presiding Judge further said:

> "The only question generally, is as to whether or not these defendants have interfered with and are interfering so closely and so directly with the constitutional

rights of your clients that they should be enjoined from doing so. And the Court held in that preliminary injunction matter that the procedure you should take should be an appeal from your criminal case, and if the Supreme Court sustains you, that would end and stop this thing, and if not, you should go to the Supreme Court, where you'd get a chance to review it" (R. —).

Further—

"You've got a case that you can redress in the State Court and by appeal and by ultimate address to the Supreme Court; but a Federal Court, an inferior court, can't go to work and interfere with those kinds of things unless the damage is imminent and remediless" (R. —).

The appellant has not cited any case from this Court which gives support to their contention that a Federal Court can step in, and by this sort of a collateral attack oust the Jurisdiction of a State Court to determine in the first instance the validity of its statutes and whether or not a criminal offense has been committed. That is the crux of this case.

Motion to Dismiss.

The Appellees ask that this appeal be not entertained and that it be dismissed.

Respectfully submitted,

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APPENDIX A.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

CIVIL ACTION No. 349.

GRACE TRENT, LUCY MCKEE, ET AL., *Plaintiffs*,

vs.

LESTER HUNT, SCOTT ADAMS, ET AL., *Defendants*.

Memorandum.

Before Evans, Circuit Judge, and Lindley and Baltzell, District Judges.

PER CURIAM.

The Plaintiffs in this action are seeking to enjoin the defendants from enforcing three (3) certain criminal statutes in the State of Indiana, alleging "that each of the three above described state statutes is unconstitutional and void, as construed and applied by defendants against plaintiffs because, as so construed and applied, each of said statutes has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their 'civil rights' of freedom of speech, of press, of assembly, and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1."

Plaintiffs pray for an interlocutory injunction and have pressed the same; therefore, a statutory three-judge court was organized pursuant to the provisions of Section 266 of the Judicial Code (28 U. S. C. A. 380). A hearing was had by such court upon the motion of plaintiffs for an interlocutory injunction, the evidence adduced consisting of affidavits filed by both the plaintiffs and the defendants, and by some oral testimony. It will not be necessary to restate the facts because, pursuant to Rule 52 of the Rules

of Civil Procedure, there is filed simultaneously herewith a Special Findings of Fact, from which findings the court has stated its Conclusions of Law. For the purposes of this Memorandum, it is sufficient that each plaintiff is a member of a large group known as Jehovah's witnesses and, during the month of June, 1940, they were engaged in their activities in Fayette County, Indiana, more especially in Connersville, the county seat of that county; that objection was made by some of the citizens of that city to such activities and, as a result thereof, affidavits were filed in the Fayette Circuit Court by the defendant, Chrisman, as Prosecuting Attorney, charging the plaintiffs, Trent and McKee, and other members of their group, with having violated certain criminal statutes of Indiana; that said Trent and McKee were tried to a jury in said circuit court upon a charge of having violated the Riotous Conspiracy statute, convicted, and sentenced to prison. An appeal was perfected by them to the Supreme Court of Indiana, the court that has exclusive jurisdiction over criminal appeals from circuit courts in the state. They were released on bond, and that appeal is now pending.

Jurisdiction is based upon a statute of the United States which says that "The district courts shall have original jurisdiction as follows: (14) of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute * * * of any State, of any right, privilege, or immunity, secured by the "Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." (28 *U. S. C. A.* 41, (14).) It is the contention of plaintiffs that the state statutes attacked by them are unconstitutional and void, as construed and applied by defendants, and that, therefore, they are being deprived of their rights under the Constitution and laws of the United States by the enforcement of such statutes in the manner in which they allege such statutes are being enforced and threatened to be enforced by the defendants. It is their position, therefore, that this court has jurisdiction under the provisions of the statute (28 *U. S. C. A.* 41 (14)) and that it is not neces-

sary to have diversity of citizenship, (which is not present) not the jurisdictional amount of in excess of Three Thousand Dollars ($3000) in controversy, in order that this court may acquire jurisdiction. With this position, we are in accord. Under the allegations of the complaint, this court has jurisdiction.

The three (3) statutes of Indiana, the validity of which is challenged by plaintiffs, are as follows:

(1) "Any person who, in any manner, for exhibition or display, shall place or cause to be placed any words, or figures, or numbers, or marks, or inscriptions, or pictures or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature whatever, upon any flag, standard, color or ensign of the United States, or shall expose, or cause to be exposed, to public view any such flag, standard, color or ensign of the United States upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any words or figures, or numbers or marks, or inscriptions, or pictures, or design, or device, or symbol, or token or notice, or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale or for use, any article or thing or substance, being an article of merchandise or a receptacle of merchandise, upon which shall have been printed, painted, or attached, or otherwise placed, a representation of any such flag, standard, color or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to distinguish the article or thing, on which shall be placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color or ensign of the United States, shall be deemed guilty of a misdemeanor * * *." (*Burns' Indiana Statutes Anno.* 1933, *Sec.* 10-506)

(2) "If three (3) or more persons shall unite for the purpose of doing any unlawful act in the nighttime or for the purpose of doing any unlawful act while wearing white caps, masks or being otherwise disguised, they shall be

deemed guilty of a riotous conspiracy, and, on conviction, shall each be imprisoned in the state prison not less than two (2) years nor more than ten (10) years, and each be fined in any sum not exceeding two thousand dollars ($2000)." (*Burns' Indiana Statutes Anno.* 1933, *Sec.* 10-1506)

(3) "It shall be unlawful for any person to advocate or incite, or to write, or, with intent to forward such purpose to print, publish, sell or distribute any document, book, circular, paper, journal or other written or printed communication, in or by which there is advocated or incited the overthrow, by force or violence, or by physical injury to personal property, or by the general cessation of industry, of the government of the United States, of the state of Indiana, or all government." (*Burns' Indiana Statutes, Anno.* 1933, *Sec.* 10-1302)

This court is asked by the plaintiffs to temporarily enjoin the defendants, their agents, etc. from the enforcement of these three statutes pending final hearing, and, upon final hearing to "enter an order declaring said above described statutes invalid and void under the Fourteenth Amendment of the Federal Constitution", etc. It is not contended by plaintiffs that the defendants, Jackson, as Attorney General, Beamer, as his successor, Townsend, as Governor, or Schricker, as his successor and as present Governor, took any part in or had any knowledge of the things of which they complain in their complaint. They are made defendants simply because of their official positions, and because the validity of state statutes is challenged. Such defendants are not now threatening to enforce said statutes as against the plaintiffs, nor have they at any time in the past so threatened. The enforcement of such statutes is a part of the duties of the local officials. Of the local officials who were such at the time of the filing of the complaint and are defendants in this action, the term of the defendant, Hunt, as Sheriff, has expired, and the term of the defendant, Johnson, as circuit judge, has expired. Neither of these two defendants holds any official position at this time, nor has either of them held any official position in Fayette

County since December 31 last. Since the evidence shows that all their acts were done in an official capacity and that they did nothing in their individual capacity, either singly or in concert with others, in an attempt to deprive these plaintiffs of their rights under the Constitution and laws of the United States, and that they never threatened, nor are they now threatening to do anything that will so deprive them, there is no occasion to issue an injunction against them.

The defendants, Himelick, Nelson, Carter, Gates, Curry and Steele, are private citizens of Connersville, neither of them having held any official position during the time in question, with the possible exception of Gates, who was named a deputy sheriff at one time, but who never qualified or acted as such. All of the acts done by them were done as individuals, and not as officials. The defendant, Himelick, is a lawyer, and assisted the prosecuting attorney in the prosecution of the plaintiffs, Trent and McKee, under the Riotous Conspiracy charge, but he was under private employment and was not acting as a deputy or special prosecuting attorney in the trial of that case. He did only the things which were required of him as an attorney to properly represent his client. Neither the defendant, Himelick, nor any of the other private citizen defendants in this action conspired together, or with any other person, or persons, to prosecute these plaintiffs, or any other member or members of their group, or to deprive them of their rights under the Constitution or laws of the United States. Neither of them has threatened, nor are they threatening at this time, to prosecute the plaintiffs or any other members of their group. The hearing fails to disclose any evidence which would warrant or justify the issuance of a temporary injunction against them, or either of them.

The two remaining defendants, Adams and Chrisman, continue as public officials, being deputy sheriff and prosecuting attorney, respectively, of Fayette County. The evidence discloses that these two defendants did nothing in the prosecution of Trent and McKee, except what they were required to do in their official capacity. If they erred in the performance of those duties, the evidence fails to show

that such errors were the result of a conspiracy on their part to deprive these plaintiffs, or any other member of their group, of their rights under the Constitution and laws of the United States. Any errors that they may have committed in the prosecution of that case are subject to review by the Supreme Court of Indiana. Neither of these defendants is threatening to prosecute these plaintiffs or other members of their group for any future activities. They have done nothing, and are threatening to do nothing, which would necessitate the issuance of an injunction against them, or either of them.

It is not necessary for us to determine, upon this hearing, the validity of the challenged statutes. It may be helpful, however, to observe that the question of the validity of at least one of the statutes, that is, the Riotous Conspiracy statute, is now being presented to the Supreme Court of Indiana in the case appealed to that court by the plaintiffs, Trent and McKee. If that statute was misconstrued and misapplied, or is in conflict with the Constitution or laws of the United States, those questions can be presented to that court in that case where there is ample opportunity for a review of all questions, including the federal questions presented, and if an adverse ruling is had, then the Judicial Code provides an opportunity for ultimate review by the Supreme Court of the United States.

In the case of *Fenner* v. *Boykin*, 271 U. S. 240, 46 S. Ct. 492, 70 L. Ed. 927, the Supreme Court said: "*Ex parte Young*, 209 U. S. 123, and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the State courts, even though this involves a challenge of the validity of some statutes, unless it plainly appears that this course would not afford adequate protec-

tion. The Judicial Code provides ample opportunity for ultimate review here in respect of Federal questions. An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some Federal court. *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497, 500." This principle has since been approved and followed, and was approved and followed by the Supreme Court in the case of *Watchtower Bible & Tract Society* v. *City of Bristol,* 305 U. S. 572, where it affirmed, without opinion, the decision of a statutory three-judge court in the District of Connecticut, 24 Fed. Supp. 57.

In a more recent case, that of *Beal, County Attorney, et al.* v. *Missouri Pacific Railroad Corporation,* in Nebraska, decided by the Supreme Court of the United States on January 20, 1941, that court approved and followed the principle announced in the case of *Fenner* v. *Boykin, supra,* and said further, "No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. * * * This is especially the case where the only threatened action is the prosecution in the state courts by state officers of an alleged violation of state law, with the resulting final and authoritative determination of the disputed question whether the act complained of is lawful or unlawful. * * * The Federal courts are without jurisdiction to try alleged criminal violation of state statutes. The state courts are the final arbiters of their meaning and appropriate applications, subject to review by this Court if such construction or application is appropriately challenged on constitutional grounds. *Hygrade Provision Co.* v. *Sherman, supra; Fenner* v. *Boykin,* 271 U. S. 240."

See also, *Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, et al.* v. *The Pullman Company et al.,* decided by the Supreme Court of the United States on March 3, 1941.

The evidence adduced upon the hearing of the motion of plaintiffs for an interlocutory injunction shows no extraordinary circumstances where the danger of irreparable loss or damage to plaintiffs is great and immediate. The evidence fails to show that there is even any threatened action or prosecution on the part of any state officer, or any defendant.

The motion for an interlocutory injunction will be denied, and a judgment will be entered accordingly.

APPENDIX B.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

Civil Action No. 349.

GRACE TRENT, LUCY MCKEE, et al., *Plaintiffs*,

vs.

LESTER HUNT, SCOTT ADAMS, et al., *Defendants*.

Special Findings of Fact.

Pursuant to Rule 52 of the Rules of Civil Procedure, the Court now states its Special Findings of Fact, upon final hearing, as follows, to-wit:

I.

That each of the plaintiffs, Grace Trent, Lucy McKee, Frank A. Julian, Donnie M. DeMars, Ernest Potter, Edwin Kleine, James T. Wood, Edward F. Edinger, and Jarry J. Duke, is a resident and citizen of the State of Indiana; that the plaintiff, John C. Rainbow, is a resident of the State of Ohio, but is not a citizen of the United States.

II.

That the defendant, Lester Hunt, is a resident and citizen of the State of Indiana and was, at the time of the commencement of this action and had been, for approximately

four (4) years prior thereto, the duly elected, qualified and acting Sheriff of Fayette County, Indiana, the county in which the city of Connersville is located, but that his term of office as such sheriff expired on December 31, 1940, and at this time he holds no official position, having been succeeded by Joseph Oser, a resident and citizen of Fayette County, Indiana, who is the duly elected, qualified and acting sheriff of Fayette County at this time, he having entered upon his duties as such sheriff on January 1, 1941; that, upon motion of plaintiffs and pursuant to Rule 25(d) of the Rules of Civil Procedure, he was substituted for defendant Hunt as party defendant under order of this Court; that the defendant, Scott Adams, is a resident and citizen of the State of Indiana, and was a deputy sheriff of Fayette County, Indiana, at the time of the final hearing in this case and had continuously been such deputy sheriff for approximately three (3) years prior thereto, but that he resigned as such on or about May 20, 1941, since which time he has held no official position in Fayette County or in Indiana; that the defendant, John J. Chrisman, is a resident and citizen of the State of Indiana, and is the regularly elected, qualified and acting prosecuting attorney of Fayette County, Indiana, and was such during the entire year 1940, and is such at the present time; that the defendant, Edwin Johnston, is a resident and citizen of the State of Indiana, and at the time of the commencement of this action was, and for approximately twelve (12) years prior thereto, had been the duly elected, qualified and acting judge of the Circuit Court of and for Fayette County, Indiana, but that his term of office as such judge expired on December 31, 1940, and at this time he holds no official position; that the defendant, Samuel D. Jackson, is a resident and citizen of the State of Indiana, and at the time of the commencement of this action was, and had been for several months prior thereto, Attorney General of Indiana, but has been succeeded by George N. Beamer, a resident and citizen of Indiana, who, at this time, is Attorney General; that the defendant, M. Clifford Townsend, is a resident and citizen of the State of Indiana, and at the time of the commencement of this action, was, and had been for approximately four (4) years prior thereto, Governor of Indiana,

but his term of office expired on January 13, 1941, at which time he was succeeded by the defendant, Henry F. Schricker, who is a resident and citizen of Indiana and is Governor of Indiana at this time.

III.

That each of the defendants, Ralph Himelick, Roy Nelson, James R. Carter, Preston Gates, Claire Curry, and Raymond Steele, is a resident and citizen of Fayette County, Indiana; that neither of said defendants holds any office, nor did either of them hold any office during the year 1940; that the defendant, Raymond Steele, was a member of the Americanism Committee of the American Legion during the year 1940, but that neither of the remaining defendants mentioned in this Finding was a member of such committee during said year; that neither of said defendants ever acted as a deputy sheriff of Fayette County, and that neither of them, with the exception of the defendant, Gates, was ever appointed as such, and he never acted in that capacity. At the time of the trial on final hearing Gates was unable to attend, because of physical disability, and was, at that time, and had been for a considerable length of time prior thereto, in the State of Florida, where he had gone to regain his health. He took no part in nor had anything to do with the arrest and prosecution of some members of the group of Jehovah's witnesses in Connersville on April 6 of this year.

IV.

That the defendants, M. Clifford Townsend, Henry F. Schricker, Samuel D. Jackson, and George N. Beamer, did not participate in any of the acts of which the plaintiffs complain, but are made parties defendant solely because of their official positions and because the validity of statutes of the State of Indiana is challenged.

V.

That the defendant, Ralph Himelick, is a lawyer practicing his profession in the city of Connersville, Fayette County, Indiana, and has been so practicing since his admission in 1914 to the bar, with the exception of six (6)

years, during the twenties, when he was judge of the Circuit Court of Fayette County, having been elected to such office by the voters of that county; that, during the summer of 1940, he was employed by a group of citizens of Connersville to assist in the prosecution of Grace Trent and Lucy McKee, two of the plaintiffs in this action, who had been charged by affidavit signed by the defendant, Scott Adams, along with Clemmie Evitts, Keziah Ullery and Frances Laughlin, with the commission of an offense under the Riotous Conspiracy statute, one of the statutes under attack in this action; that said affidavit was sworn to before the said defendant, Chrisman, as prosecuting attorney, and was by him filed in the Circuit Court of Fayette County; that the said Himelick did assist in the prosecution of said case, but solely under the employment aforesaid, and did not act as a special prosecuting attorney, or in any other official capacity, in the prosecution of such case; that all of the acts done by the said Himelick, as shown by the evidence, were done by him as an attorney under the aforesaid employment in assisting in the prosecution of said case, and that he did nothing outside the trial of said case with reference to the things of which the plaintiffs complain; that he has not threatened to prosecute the plaintiffs, or either of them, in the future, or to in any manner interfere with their activities; and that he has not conspired with his co-defendants, or either of them, or any one else, to prosecute the plaintiffs in the future, or to in any manner interfere with their activities. That he took no part in nor had any connection with the arrest and prosecution of some members of the group for their activities in Connersville on April 6, 1941, nor did he conspire with any defendant or any other person to cause the arrest or prosecution of such members upon that or any other occasion.

VI.

That the plaintiffs in this action are members of a large group known as Jehovah's witnesses, and have each received a printed certificate bearing the signature of J. F. Rutherford, President of the Watchtower Bible & Tract Society, Inc., certifying that he or she is an ordained min-

ister, such certificate being received by them at the time they received their first books and literature from said society, they having purchased such books and literature; that the said society publishes books and pamphlets which purport to disseminate Bible truths in various languages, some of which publications are "The Watchtower", "Consolation", "Armageddon", "Conspiracy Against Democracy", "Government—Hiding the Truth,—Why?", "The Final War", "Universal War Near", "Warning", etc.; that said society has published more than three hundred and fifteen thousand (315,000) volumes of such literature and sells the same to its representatives, some of whom are these plaintiffs, at prices ranging from twenty-five (25) cents to three dollars and fifty cents ($3.50) per hundred, all depending upon the kind and character of the publication; that these plaintiffs and other members of their group advertise and distribute such said literature as they may have ordered and purchased from such society; that these plaintiffs, as members of the group known as Jehovah's witnesses, and as ordained ministers, and all members of said group, go from house to house, and from place to place upon the streets and sidewalks of the various towns and cities and offer for sale, at prices ranging from five (5) cents to fifty (50) cents per copy, the various publications which they may have purchased from the Watchtower Bible & Tract Society, Inc., as aforesaid, the difference between the cost of such publications and the price for which they are sold being retained by the person making the sale; however, some of the literature may be distributed free to persons not willing or able to pay for the same, but the large majority is sold; that the majority of the group also carry with them, when going from house to house, and when upon the streets and sidewalks engaged in their work as ordained ministers, portable phonographs with records containing talks given by Rutherford and others, and containing quotations from the literature which they are distributing; that they play, or offer to play, such records to the persons upon whom they call at their homes, or to persons whom they meet upon the street or sidewalk, and offer to explain their belief and the teachings of their group. Some of the group are what is known as "full

time" workers, spending all their time in the above activities; some spend only a part of their time in such activities; some have jurisdiction over several states, or parts of states, and are known as zone or regional servants. The plaintiff, John C. Rainbow, was a zone servant, and, as such, had jurisdiction over a portion of the western part of Ohio, the northern portion of Kentucky, and a portion of the eastern part of Indiana, including Fayette County, Indiana, the county in which Connersville is located. He directs or advises the members within his zone and arranges for the activities of such members and designates the territory within his zone where the activities are to be carried on. Such arrangement was made by him for the activities in Connersville on April 6, and each member who participated therein was given specific directions by him as to the territory in which he or she was to carry on his or her activities, etc.

VII.

That the literature which is distributed by these plaintiffs and other members of their group is characterized by a discussion and interpretation of certain Bible passages, containing throughout a vein of prophecy to the effect that there will soon be a complete destruction of all our religious, commercial and political institutions, and a wholesale slaughter of the unchristian people, all of which will be committed by the invisible army of the Lord at the great "Battle of Armageddon"; that neither the literature nor these plaintiffs advocates that the creature man should commit any act or acts of force or violence to bring about this destruction; that these plaintiffs believe, and the literature teaches, that there will be established on earth, after such battle, a theocracy whereby God's Kingdom on Earth will be achieved; that these plaintiffs believe, and the literature teaches, every form of religion, as practiced today, is a "snare and a racket", and that whenever in their (plaintiffs') opinion the law of man conflicts with the law of God, as interpreted by them, the law of God, as thus interpreted, should be followed, and that, if their interpretation of the law of God is contrary to a decision of the Supreme Court of the United States, interpreting and applying any law of

our country, then, they will follow the law of God, as interpreted by them, rather than to follow the decision of the Supreme Court.

VIII.

That, according to the affidavit of Frederic William Franz, one of the directors of the Watchtower Bible & Tract Society, Inc., which publishes and sells the literature to plaintiffs and all other members of their group, and, under the evidence upon final hearing "each one of Jehovah's witnesses are taught and believe that as ordained ministers of Jehovah God, and as a result of the covenant that they have entered into with Jehovah God (Isaiah 61: 1-3; Isaiah 42: 10-12), that they must preach the Gospel by presenting the above printed books and booklets in the above manner, and if they fail to thus preach the Gospel, they shall forever suffer complete destruction and death at the hands of Almighty God." That the teaching of this principle is intended, upon the part of the directors and officials of the Watchtower Bible & Tract Society, Inc., to encourage the sale and distribution of its books and literature, and it does, in fact, encourage such sale and distribution, and as a consequence thereof, the sale and distribution of such books, literature, etc. are greatly increased. That one of the qualifications for membership in the group known as Jehovah's witnesses is that each witness engage in the sale and distribution of such books and literature.

IX.

That these plaintiffs, and many other members of their group, have from time to time extending over a period of several months prior to the summer of 1940, sold and distributed to the residents of Connersville literature which they had purchased from the Watchtower Bible & Tract Society, Inc.; that they have gone from house to house, call-in upon the residents of such city in an attempt to sell their literature, have played or offered to play records upon their phonographs when making such calls, and have explained or offered to explain their belief, including their belief that the American flag should not be saluted, that it was contrary to the teachings of Almighty God to salute

the flag, to the residents upon whom they called; that they have also solicited people whom they would meet upon the streets of such city to purchase such literature or to listen to their phonograph records, and they have been so engaged for a considerable length of time prior to the summer of 1940; that they would assemble in the evening at the home of one of these plaintiffs or at the home of some other member of their group in Connersville for the purpose of discussing the literature and their belief in the cause which they represented and in planning their future activities in such city. That such activities upon their part were offensive to a portion of the citizens of Connersville and many complaints were made by them to the defendants, Hunt, Adams and Chrisman, as sheriff and deputy sheriff and prosecuting attorney, respectively, as to such activities.

X.

That, during the month of June, 1940, a group of Jehovah's witnesses, including the plaintiffs, Trent and McKee, were going from house to house in the city of Connersville, and were upon the streets of said city, selling and distributing, and attempting to sell and distribute the literature and publications which they had theretofore purchased from the Watchtower Bible & Tract Society, Inc.; that their activities in so doing were offensive to, and resented by, some of the residents of such city who reported the same to the defendant, Chrisman, as Prosecuting Attorney; that, in response thereto, said defendant, Chrisman, acting in his official capacity, made an investigation of such activities, and an investigation as to the contents of the literature and publications which were being distributed, to determine whether or not, in his opinion, there was involved a violation of any state statutes, and if so, whether or not the said plaintiffs, Trent and McKee, or any other members of their group, were violating such statutes.

XI.

That, among other things, it was charged by the residents of Connersville who complained to the defendant, Chrisman, that the plaintiffs, Trent and McKee, and other members of their group, did not believe in saluting the American

flag and were so teaching their children and others upon whom they called who would listen to such teachings; that, as a result of these complaints, a group of citizens of that city, including the defendants, Nelson, Steele, Curry and Adams, as well as ex-sheriff Hunt, extended an invitation to the plaintiffs, Trent and McKee, and three other witnesses, Keziah Ullery, Clemmie Evitts and Margaret Tuall, to meet with them at the home of the American Legion on June 19, 1940, to discuss their activities and to examine the contents of the literature being sold and distributed by them and to hear the phonograph records played; that said witnesses accepted such invitation and attended such meeting at which certain records were played and the literature examined; that it was the opinion of the group of citizens that some of the literature being sold and distributed and some of the records being played were objectionable and that further sales and distribution thereof would lead to disorder and perhaps riot in the city, and the witnesses present were so advised; that said group of citizens advised the witnesses that it would be prudent for them to cease such activities and further sales and distribution of such literature as was pointed out by them to be objectionable; however, the witnesses present at such meeting gave such group of citizens no assurance that their activities would be any different in the future than what they had been in the past.

XII.

That, upon the following day, that is, on June 20, 1940, the plaintiffs, Trent and McKee, and four (4) other members of their group, to-wit: Frances Laughlin, Clemmie Evitts, Ruby Revelie and Keziah Ullery, continued their activities in the city of Connersville and, in the afternoon of that day, the defendants, Nelson, Carter and Gates, went to the part of the city in which these witnesses were canvassing and again asked them to refrain from advocating certain of their beliefs, such as that our government is about to be destroyed by force, that it is wrong to salute the American flag, and such other teachings as they pointed out were objectionable to the citizens of said city; that said witnesses refused to comply with this suggestion, and that said defendants so notified Hunt and Adams, sheriff, and

deputy sheriff, respectively, who arrested said witnesses and placed them in jail.

XIII.

That, because of the various complaints made to him by the citizens of the city of Connersville, and, further, because of his honest belief that said witnesses were violating statutes of the State of Indiana, the defendant, Chrisman, acting in his official capacity as Prosecuting Attorney, caused affidavits to be prepared and filed charging the witnesses mentioned in Finding No. XII with Flag Desecration in violation of a criminal statute of the State; that such affidavits were sworn to by the defendant, Adams, on June 21, 1940; that each of the witnesses thus charged was arraigned in open court, the defendant, Johnston, presiding as judge, and, with the exception of Trent and McKee, entered pleas of guilty to the charge of Flag Desecration, Trent and McKee pleading not guilty.

XIV.

That the defendant, Chrisman, as prosecuting attorney, having made a further investigation, and being of the opinion that the plaintiffs, Trent and McKee, together with Frances Laughlin, Clemmie Evitts and Keziah Ellery, had violated the Riotous Conspiracy statute of Indiana, prepared an affidavit which was sworn to by the defendant, Adams, on June 22, 1940, charging them with the violation of such statute, and bench warrant issued on the same day; that such warrant was served upon them by Hunt, as sheriff, on the same day that it was issued.

XV.

That, on June 26, 1940, the plaintiffs in this action, Trent and McKee, were arraigned in open court upon the charge of having violated the Riotous Conspiracy statute, entered pleas of not guilty, and each of their bonds was fixed at Three Thousand Dollars ($3000.00), in default of which they were each remanded to jail where they remained until August 1, 1940, when bond was provided and they were each released therefrom; that they were tried to a jury

upon the Riotous Conspiracy charge in the Fayette Circuit Court, the defendant, Johnston, presiding as judge, such trial being begun on September 18 and concluded on September 24, on which date the jury returned a verdict finding each of the defendants in that case, Trent and McKee, guilty, as charged; that judgment was duly rendered upon such verdict on September 25.

XVI.

That, on October 22, motion for a new trial was filed by each, Trent and McKee, which said motion was overruled by the court on December 4, delay having been caused by the failure of counsel for the said Trent and McKee to appear at the time fixed for oral argument upon three different occasions; that said Trent and McKee appealed their conviction to the Supreme Court of Indiana, notice of such appeal and acknowledgment of service thereof being under date of December 9, and each defendant in that case was released under bond pending such appeal on December 11, and they are now at liberty under such bond; that the transcript is now being prepared, and the appeal is now pending before the Supreme Court of Indiana, which court has exclusive jurisdiction over all appeals from judgments of the various circuit courts of the state in criminal cases; that the question of the validity or constitutionality of the statutes in question is presented to the Supreme Court of Indiana in that case for determination. That none of the defendants, state officials, county officials or laymen, has delayed the appeal in any manner, nor have they or any of them sought in any manner to prevent the prosecution of the appeal or to delay its early consummation.

XVII.

That the evidence fails to disclose any activities upon the part of Jehovah's witnesses in Connersville from December 27, 1940, the date of the filing of the complaint in this action, and for a considerable length of time both prior and subsequent thereto, until the morning of Sunday, April 6, 1941. Neither does the evidence disclose any threat or threats on the part of the defendants, the chief of police, William Traylor, or any other citizen or citizens of Connersville,

or of Fayette County, to interfere with their activities during all that time, and no action was taken by any of the defendants, the chief of police, or any other person or persons, to interfere with their activities in said city and county following the disturbance in the year 1940 until April 6 of this year.

XVIII.

That, as heretofore found, John C. Rainbow, of Cincinnati, Ohio, was a zone servant of Jehovah's witnesses on April 6 of this year, and had been such servant for a considerable length of time prior thereto; that, as such zone servant, he supervised and directed their activities within the territory over which he had jurisdiction, as set forth in Finding No. 6; that, prior to said date, he laid plans for activities in Connersville by members who were residents of places other than Connersville and other than the State of Indiana, although there were members residing in and near Connersville at that time, such activities to be prior to the date of the final hearing in this cause; that, pursuant to such plan, he arranged for a large number of the group to assemble in a room known as Kingdom Hall, 110 East 8th Street, Cincinnati, Ohio, early on Sunday morning, April 6, for the purpose of traveling to Connersville, Indiana, a distance of approximately sixty (60) miles, to resume their activities; that, prior to such meeting in Cincinnati, the said Rainbow had prepared, or caused to be prepared, on pieces of cardboard, a number of plats showing and designating the streets in various parts of the city of Connersville, each plat representing a different section of said city; that these plats were prepared in advance for the purpose of distribution among the members thus to assemble, thereby assigning to the various members certain territory represented on said plat for their respective activities, that is, the member was directed by Rainbow to conduct his or her activities within the territory shown upon the plat given to such member; that, as a result of this arrangement or plan, seventy-five (75) members, neither of whom was a resident of Indiana nor belonged to the company of Jehovah's witnesses to which those in Connersville belonged, but many of whom had attended the trial of Trent and Mc-

Kee in Connersville during the latter part of September 1940, and had knowledge that a large portion of the citizens of that city resented their activities therein, especially their teaching that religion, as practiced by them and their churches, was a snare and a racket, and that it was wrong to salute the American flag, met in the room theretofore designated as a meeting place in Cincinnati; that such members were assigned territory in Connersville by the said Rainbow, given a plat which indicated the territory to which they had been assigned, and directed by him to proceed to Connersville and begin their activities in such territory; that there were men and women, boys, girls and children among the group thus assembled, and their ages ranged from two and a half (2½) years to more than seventy (70) years.

XIX.

That the day thus selected by the said Rainbow for the activities in Connersville was Palm Sunday, and the time at which these seventy-five (75) members reached Connersville and began their activities was the time when the people of that city were going to their respective churches for the purpose of worship, or were already in attendance at the church of their choice; that some of the male members of the group drove to the district assigned to them and their family, but remained in their automobiles and permitted their wives and small children in many instances to call from house to house in an effort to explain their views and sell their literature or to play records expounding their views upon the phonograph which they took with them; that their activities were similar to the activities of all members of their group, as set forth in Finding No. 6; that such activities were offensive to many of the citizens of Connersville, especially because of the fact that it was Palm Sunday; that many complaints were made by such citizens by telephone and in person to the prosecuting attorney and the sheriff of Fayette County, to the chief of police of Connersville, and to the Mayor of that city; that there were indications of another outburst of violence in the city, and, believing that the criminal laws of the state had been violated by members of the group, the defendant, Chrisman, act-

ing in his official capacity as prosecuting attorney, caused affidavits to be prepared and filed against the members thus participating in these activities, charging them with the violation of criminal statutes of the state; that warrants were issued, and Sheriff Oser and his deputy, defendant, Adams, acting in their respective official capacities, served such warrants by arresting such members and confining them until bond, which was fixed, had been provided, with the exception of the children, who were not so confined.

XX.

That on April 9, 1941, the grand jury of Fayette County was legally impaneled and investigated the occurrence of the previous Sunday; that, as a result of its investigation, an indictment in three (3) counts was returned against the members who participated in the previous Sunday's activities, charging them with a violation of the criminal laws of the State; that the indictment was dismissed as to many of the members because of their infancy or tender age; that the remaining defendants were brought into court on April 10 and advised of the charge and of their rights to be represented by counsel, etc., and, upon their suggestion that they desired counsel, the case was continued until April 12, when they were all released upon bond. No further action has been taken in that case.

XXI.

That, at the time the plaintiff and zone servant, Rainbow, planned and directed the activities of the group in Connersville on April 6, he knew of the feeling of the citizens of that city as to their continued activities in that vicinity, he knew of the previous disturbances in that city occasioned by their activities, he knew of the trial, conviction and sentence of plaintiffs Trent and McKee, having attended some of the sessions of the court during that trial, he knew of the pendency of this action, and of the refusal of this court to grant a temporary injunction, he knew that this case was to be scheduled for final hearing within a short time; that this information was known also to many of the seventy-five (75) members who made the trip to Connersville on April 6, many of them also having attended

the trial of Trent and McKee; that none of the seventy-five (75) members thus making the trip were residents of Indiana, but were residents of West Virginia, Ohio, or Kentucky; that the said Rainbow was among the seventy-five (75) members who made the trip and directed their activities and he was also among those arrested on that day; that the said Rainbow, and the members who planned the trip to Connersville and executed those plans, knew at all times that Connersville was a "hot spot", as stated by one of them in a letter to his family while confined in jail, and that they would probably be arrested by the authorities if they resumed their activities on Palm Sunday; that such activities were resumed at that time and under those circumstances for the purpose of further creating dissension, causing their arrest and thus enabling plaintiffs to show, upon the final hearing in this case, that their activities had been interrupted, etc., and was not because of their desire to practice their religion and to thus worship God.

XXII.

The court finds that the troubles which occurred in Connersville on Palm Sunday, April 6, 1941, were deliberately brought about by the Jehovah's witnesses; that said Jehovah's witnesses selected Connersville because it was, in their language, "a hot spot" and that greater advertisement would come to them by reason of meetings in said city where the heated clashes between citizen and Jehovah's witnesses would be most likely to occur; that the business of the Watchtower Bible and Tract Society, Inc., is commercial; that it publishes or sells tracts from which it and the salaried officers of it and Jehovah's witnesses are paid; that the witnesses who preach God's word also sell this literature published by the Watchtower Bible and Tract Society and both they and the Watchtower Bible and Tract Society profit from such sales; that there was an element of advertisement and salesmanship in the action of the Jehovah's witnesses in coming to Connersville, April 6, and it is fairly inferable that they also came to help make out a case of irreparable injury and molestation of their right of worship and to make evidence which might be used to support the instant suit.

XXIII.

That, upon the prosecution and trial of the case of Trent and McKee in the Circuit Court, the defendants, Hunt, Adams, Chrisman and Johnston, acted only in their respective official capacities and performed such duties only as were required of them under their oaths; that the evidence fails to show that either of such defendant officials was in a conspiracy with the others, or either of them, or with any one else, to deprive the plaintiffs of their rights under the Constitution or laws of the United States, or that they threatened or are at this time threatening to unlawfully prosecute these plaintiffs or any other members of Jehovah's witnesses who may be found distributing any of the aforesaid literature in Fayette County; that, since the trial of that case, the defendants, Hunt, Johnston and Adams, have ceased to be officials, and neither Hunt nor Johnston took any part in the prosecution of the members of Jehovah's witnesses for their activities on April 6 and that Adams acted only in his official capacity as deputy sheriff upon that occasion and all his acts were done in good faith in the performance of his official duties; that Joseph Oser, as successor of Hunt, as sheriff, has been, by order of this court, substituted as a party defendant for the defendant, ex-sheriff, Hunt, but the evidence fails to show that he has done anything except in his official capacity in good faith in order to prevent violence and to protect the welfare of such witnesses, as well as the citizens of Fayette County; that the said Oser is not in a conspiracy with the defendants, or either or any of them, to interfere with the activities of the plaintiffs or other members of their group or to deprive them of their rights under the Constitution or laws of the United States, nor has he threatened or at this time is he threatening to unlawfully prosecute them or any other members of their group who may be found distributing any of the aforesaid literature in Fayette County, but is acting only as an officer in good faith in the performance of his duties as such official. That William Traylor is, at this time, and was, on April the 6th of this year, the chief of police of the city of Connersville, and, that, as such chief of police, he, and some of the policemen of the city of

Connersville, assisted in the arrest of those members of Jehovah's witnesses who were thus arrested on that day; that he is not a party to this action and has done nothing, except in his official capacity, and that all acts done by him in such capacity were done in good faith in order to prevent violence and to protect the welfare of such witnesses, as well as the citizens of Connersville and Fayette County; that the said Traylor is not in a conspiracy with the defendants, or either or any of them, to interfere with the activities of the plaintiffs or any member or members of their group, but is acting only in good faith in the performance of his official duties. That the evidence fails to show that the defendants, Nelson, Carter, Gates, Curry, and Steele, have conspired together, or that either has conspired with the others, or either of them, or with any one else, for the purpose of prosecuting these plaintiffs, or any other members of Jehovah's witnesses for their activities as such members, nor are they, or either of them, threatening to prosecute them if they may be found distributing their literature as aforesaid, nor are they, or either of them, as shown by the evidence, in a conspiracy among themselves, or with any other person or persons, which had, for its object, the deprivation of the constitutional or legal rights of the plaintiffs. These last named defendants have never held any official positions insofar as the evidence discloses, and all acts done by them were done as individuals.

XXIV.

That the evidence fails to show that the plaintiffs and other members of their group, or either or any of them, will suffer irreparable damages or injuries unless an injunction is issued in this case.

——— ———,
Judge, United States Circuit Court of Appeals.

——— ———,
Judge, United States District Court.

——— ———,
Judge, United States District Court.

———, 1941.

APPENDIX "C".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

Civil Action No. 349.

GRACE TRENT, LUCY MCKEE, et al., *Plaintiffs,*

vs.

LESTER HUNT, SCOTT ADAMS, et al., *Defendants.*

(Filed June 12, 1941, Albert C. Sogemeier, Clerk.)

Memorandum.

Before Evans, Circuit Judge, and Lindley and Baltzell, District Judges.

Per CURIAM:

The plaintiffs in this action are seeking to enjoin the defendants from enforcing three (3) certain criminal statutes in the State of Indiana, alleging "that each of the three above described state statutes is unconstitutional and void, as construed and applied by defendants against plaintiffs because, as so construed and applied, each of said statutes has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their 'civil rights' of freedom of speech, of press, of assembly, and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1."

Plaintiffs prayed for an interlocutory injunction, and pressed the same; therefore, a statutory three-judge court was organized pursuant to the provisions of Section 266 of the Judicial Code. (28 USCA 380) A hearing was had by such court upon the motion of plaintiffs for an interlocutory injunction.

Plaintiffs prayed for an interlocutory injunction, and pressed the same; therefore, a statutory three-judge court was organized pursuant to the provisions of Section 266 of

the Judicial Code. (28 USCA 380) A hearing was had by such court upon the motion of plaintiffs for an interlocutory injunction, the evidence was adduced, consisting of affidavits filed by both the plaintiffs and the defendants, and by some oral testimony. The interlocutory injunction was denied, and the cause is now submitted on final hearing.

It will not be necessary to re-state the facts, because, pursuant to Rule 52 of the Rules of Civil Procedure, there is filed simultaneously herewith a Special Findings of Fact, from which Findings the court has stated its Conclusions of Law. For the purposes of this Memorandum it is sufficient to say that each plaintiff is a member of a large group known as Jehovah's witnesses, and, during the month of June, 1940, they were engaged in their activities in Fayette County, Indiana, more especially in Connersville, the county seat of that county and a city of approximately thirteen thousand population; that objection was made by many of the citizens of that city to such activities, and, as a result thereof, affidavits were filed in the Fayette Circuit Court by the defendant, Chrisman, as prosecuting attorney, charging the plaintiffs, Trent and McKee, and other members of their group, with having violated certain criminal statutes of the State of Indiana; that said Trent and McKee were tried to a jury in said circuit court upon a charge of having violated the Riotous Conspiracy statute, convicted and sentenced to prison. An appeal was perfected by them to the Supreme Court of Indiana, the court that has exclusive jurisdiction over criminal appeals from circuit courts in the state. They were released on bond, and that appeal is now pending. While there has been some delay in procuring the transcript of the evidence which constitutes the bill of exceptions to be filed in the Supreme Court in that case, yet such delay has not been occasioned by the acts or conduct of the defendants, or either or any of them. In fact, the Attorney General of Indiana, whose duty it is to represent the state in the Supreme Court in all appeals in criminal cases, has co-operated with the plaintiffs and has voluntarily agreed in that court to an extension of time for the filing of the bill of exceptions. The delay seems to have been occasioned by a misunderstanding on the part of the court reporter in the Circuit Court as to the preparation of

the transcript, or a failure upon her part to follow the instructions of the plaintiffs' attorney in the preparation thereof. In any event, the actions of the court reporter cannot in any manner be attributed to any of the defendants, or to any other officials or laymen of Fayette County, or of the city of Connersville. She was solely responsible for her acts.

The complaint in this action was filed on December 27, 1940. A hearing was had on plaintiffs' petition for an interlocutory or preliminary injunction on January 13, 1941, and on March 17 following a judgment was entered denying such injunction. There were no activities on the part of plaintiffs or other members of their group in the city of Connersville or in Fayette County following the denial of such injunction until on Sunday, April 6. Neither had there been any activities upon their part in that city or county since during the summer of 1940, when they encountered difficulties out of which grew the prosecution of Trent and McKee in the Circuit Court heretofore referred to.

For the purpose of conducting the activities of Jehovah's witnesses, the United States is divided into regions, zones and communities. A region is comprised of many states, or parts of states, and their activities in such region are supervised and directed by a member who is known as a regional servant. A region is divided into zones, and each zone is comprised of several states, or parts of states, and their activities in such zone are supervised and directed by a member who is known as a zone servant. The zone may be divided into communities and the members living therein constitute a company. On April 6, and for some time prior thereto, and at the present time, the city of Connersville and Fayette County were and are located within Zone 7, which zone is under the supervision and direction of zone servant John C. Rainbow, of Cincinnati, Ohio. As such zone servant, he planned in advance for a large number of their members from states other than Indiana to go to Connersville and engage in their activities on Sunday morning April 6. Pursuant to these plans, seventy-five (75) members from the States of West Virginia, Ohio and Kentucky met at Kingdom Hall, 110 East 8th Street in Cincinnati,

Ohio, early that morning and were instructed by the zone servant and each was assigned certain specific territory in Connersville in which to carry on his or her activities, each receiving from him a cardboard upon which was traced a plat showing the streets in Connersville which were included in the territory to be covered by the member receiving such plat. After having been thus instructed and directed, the seventy-five (75) members, among whom was the zone servant, proceeded by automobile to Connersville, Indiana, a distance of approximately sixty (60) miles, arriving there about nine or nine-thirty o'clock that morning, and going immediately to the territory which had theretofore been assigned to them by their zone servant, beginning their activities by going from house to house explaining or attempting to explain their belief, and selling or attempting to sell the books or literature which they had brought with them for that purpose. In some instances, the husband remained in the automobile, sending his wife and small children to call upon the residents within his territory. This being Palm Sunday and at a time of the day when many citizens of Connersville were either attending church or were on their way to church, many complaints were made in person and by telephone by the citizens of that city to either the prosecuting attorney, sheriff, deputy sheriff, chief of police, or mayor. As a result of these complaints and believing that the criminal laws of the state were being violated, the defendant, Chrisman, acting in his official capacity as prosecuting attorney, prepared, or had prepared, affidavits charging each of the seventy-five (75) members with the violation of a criminal statute. Warrants were issued and the members were arrested and confined until released upon bond later that week. A grand jury was impaneled on April 9 and an indictment was returned charging these members with the violation of the criminal laws of Indiana. The indictment was afterwards dismissed as to many of the boys, girls and children, and the others were released on bond. No further action has been taken in that case.

On April 11, a supplemental complaint was filed in this case wherein, among other things, it is alleged that the defendants and other public officials of Connersville and Fayette County have threatened to continue to arrest the

plaintiffs and other members of their group if they continue their activities in that community. The supplemental complaint brings to the court's attention, through allegations contained therein, the occurrences of April 6 and charges that the present sheriff, Joseph Oser, and the chief of police, William Traylor, have arrested and are threatening to arrest members of Jehovah's witnesses in violation of their constitutional rights, and asks that they each be made a party defendant. This request was afterwards withdrawn by the plaintiffs and no notice was ever served upon them, or either of them. However, on June 6, the plaintiffs filed a motion asking that Joseph Oser, the present sheriff, be substituted as a party defendant in lieu of defendant, Hunt, under Rule 25 (d) of the Rules of Civil Procedure, and, under stipulation of the parties and by order of court, such substitution was made on June 12. It is also alleged in the supplemental complaint that the defendants and other officials in Fayette County have conspired to falsely charge the plaintiffs and other members of their group with the violation of the following Indiana statute:

"Any person or persons who shall unite or combine with any other person or persons for the purpose of committing a felony, within or without this state; or any person or persons who shall knowingly unite with any other person or persons, body, association or combination of persons, whose object is the commission of a felony or felonies, within or without this state, shall, on conviction, be fined not less than $25.00 nor more than $5000.00 and imprisoned in the state prison not less than two nor more than fourteen years."

(Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1101.)

The indictment returned on April 9 was in three (3) counts, the first of which charged a violation of the Indiana statute prohibiting riots (Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1505); the second of which charged a violation of the statute last above set out, the felony alleged to have been the object of the conspiracy being the violation of the inciting of violence statute (Burns' Indiana

Statutes, Annotated, 1933, Sec. 10-1302); and the third of which charged the violation of the inciting of violence statute. On April 28, by an amendment to the supplemental complaint, a copy of this indictment is fully set forth. The plaintiffs, in their supplemental complaint, ask that an injunction be issued by this court restraining the prosecution in the state court of the defendants named in this indictment "on account of the fact that jurisdiction is first attached in and to the United States District Court with respect to this controversy by and through the filing of the original complaint here, and that all proceedings in the state courts should be stayed until this controversy is decided by this court." The defendants filed answers to the complaint, the supplemental complaint and the amendment to the supplemental complaint, and the trial upon final hearing was begun on April 28 in this court and concluded on May 2.

Jurisdiction is based upon a statute of the United States which says that "The district courts shall have original jurisdiction as follows: (14) Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute • • • of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." (28 U. S. C. A. 41. (14).) It is the contention of plaintiffs that the state statutes attacked by them are unconstitutional and void, as construed and applied by defendants, and that, therefore, they are being deprived of their rights under the Constitution and laws of the United States by the enforcement of such statutes in the manner in which they allege such statutes are being enforced and threatened to be enforced by the defendants. It is their position, therefore, that this Court has jurisdiction under the provisions of the statute, *supra,* and that it is not necessary to have diversity of citizenship (which is not present) nor is the jurisdictional amount necessary. With this position, we are in accord. Under the allegations of the complaint this court has jurisdiction.

The three (3) statutes of Indiana, the validity of which is challenged by plaintiffs, are as follows:

(1) "Any person who, in any manner, for exhibition or display, shall place or cause to be placed any words, or figures, or numbers, or marks, or inscriptions, or pictures or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature whatever, upon any flag, standard, color or ensign of the United States, or shall expose, or cause to be exposed, to public view any such flag, standard, color or ensign of the United States upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any words or figures, or numbers, or marks, or inscriptions, or pictures, or design, or device, or symbol, or token, or notice or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale or for use, any article or thing or substance, being an article of merchandise or a receptacle of merchandise, upon which shall have been printed, painted, or attached, or otherwise placed, a representation of any such flag, standard, color or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to distinguish the article or thing, on which shall be placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color or ensign of the United States, shall be deemed guilty of a misdemeanor * * *."

(Burns' Indiana Statutes, Annotated, 1933, Sec. 10-506.)

(2) "If three (3) or more persons shall unite for the purpose of doing any unlawful act in the nighttime or for the purpose of doing any unlawful act while wearing white caps, masks or being otherwise distinguished, they shall be deemed guilty of a riotous conspiracy, and, on conviction, shall each be imprisoned in the state prison not less than two (2) years nor more than ten (10) years, and each be fined in any sum not exceeding two thousand dollars ($2000)."

(Burns' Indiana Statutes, Annotated, 1933, Sec. 10-506.)

(3) "It shall be unlawful for any person to advocate or incite, or to write, or, with intent to forward such purpose, to print, publish, sell or distribute any document, book, circular, paper, journal or other written or printed communication, in or by which there is advocated or incited the overthrow, by force or violence, or by physical injury to personal property, or by the general cessation of industry, of the government of the United States, of the State of Indiana, or all government."

(Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1302.)

This Court is asked by the plaintiffs to enter an order declaring said above described statutes invalid and void under the Fourteenth Amendment of the Federal Constitution, etc. It is not contended by plaintiffs that the defendants, Jackson, as Attorney General, Beamer, as his successor, Townsend, as Governor, or Schricker, as his successor and as present Governor, took any part in or had any knowledge of the things of which they complain in their complaint, in their supplemental complaint, or in the amendment thereto. They are made defendants simply because of their official positions and because the validity of state statutes is challenged. Such defendants are not now threatening to enforce said statutes as against the plaintiffs, nor have they, at any time in the past, so threatened. It is the duty of the Attorney General to appear in the Supreme Court and represent the State in all criminal cases appealed to that Court. He is performing that duty in the case of Trent and McKee, but that is the only action upon his part which, in any manner, affects the plaintiffs or any other members of their group. The enforcement of such statutes is a part of the duties of the local officials. Of the local officials who were such at the time of the filing of the complaint the term of the then defendant, Hunt, as sheriff, has expired, and the term of the defendant, Johnston, as circuit judge, has expired. Neither of these two parties holds any official position at this time, and neither of them has held any official position in Fayette County since December 31 last. Since the evidence shows that all their acts were done in an official capacity in good faith in the performance of their

official duties and that neither did anything in his individual capacity, either singly or in concert with others, in an attempt to deprive these plaintiffs of their rights under the Constitution and laws of the United States, and that they, nor either of them, ever have threatened, nor are they or either of them now threatening, to do anything that will so deprive them, there is no occasion to issue an injunction against them.

The defendants, Himelick, Nelson, Carter, Gates, Curry and Steele, are private citizens of Connersville, neither of them having held any official position during the time in question, with the possible exception of Gates, who was named a deputy sheriff at one time but who never qualified or acted as such. All of the acts done by them were done as individuals and not as officials. The defendant, Himelick, is a lawyer, and assisted the prosecuting attorney in the prosecution of the plaintiffs, Trent and McKee, under the Riotous Conspiracy charge, but he was under private employment and was not acting as a deputy or special prosecuting attorney in the trial of that case. He did only the things that were required of him as an attorney to properly represent his client. Neither the defendant, Himelick, nor any of the other private citizen defendants in this action conspired together or with any other person or persons to prosecute these plaintiffs or any other member or members of their group or to deprive them of their rights under the Constitution or laws of the United States. Neither of them has threatened, nor are they at this time threatening, to prosecute the plaintiffs or any other members of their group. The hearing fails to disclose any evidence which would warrant or justify the issuance of an injunction against them, or either of them. Neither of them took any part in the occurrence on April 6, nor did they, or either of them, counsel or confer with any other person or official who participated in the arrest and indictment of the seventy-five (75) members who were arrested on that date.

The remaining defendants, Oser, Adams and Chrisman, were public officials on April 6, 1941, being sheriff, deputy sheriff and prosecuting attorney, respectively, of Fayette County at that time. However, on or about May 20, 1941,

the defendant, Adams, resigned as deputy sheriff, and, since that date has not held, and does not at this time hold any official position in Fayette County or in Indiana. The evidence discloses that the defendant, Oser, was not a public official at the time of the trial of Trent and McKee and that he did nothing as an individual in the prosecution of that case. The evidence further discloses that the defendants, Adams and Chrisman, did nothing in the prosecution of that case except what they were required to do in their official capacity. If they erred in the performance of those duties the evidence fails to show that such errors were the result of a conspiracy on their part to deprive these plaintiffs or any other member or members of their group of their rights under the Constitution and laws of the United States. Any errors that they may have committed in the prosecution of that case are subject to review by the Supreme Court of Indiana in the appeal now pending in that court. They, together with the now defendant, Sheriff Oser, and some of the police officers of Connersville, did assist in the arrest of the seventy-five (75) members on April 6 in that the defendant, Chrisman, as prosecuting attorney, prepared or had prepared the affidavits and caused the warrants for their arrest to be issued, and the defendants, Oser and Adams, as sheriff and deputy sheriff, respectively, assisted in the arrest of such members. In thus doing, each acted in his official capacity in good faith and in the honest belief that such action upon his part was justified under the circumstances and was necessary to preserve order in the community and to prevent another outburst of violence. Whether they exercised good judgment in the discharge of their official duties is beside the point. It is sufficient to say that, in their honest opinion, they did what they believed to be necessary in the discharge of their official duties and in accord with their oaths as such officials. They were charged with a duty of protecting the citizens of Connersville and Fayette County in their rights to worship God as they saw fit, to attend the church of their choice unmolested, and to the peaceful enjoyment of their homes undisturbed, as well as to protect the rights of the seventy-five (75) members who came from foreign states on Sunday morning and

sought to engage in their activities when many local citizens did not care to be disturbed by such persons, preferring rather to be left to their own religious belief and not be disturbed in the privacy of their homes. Each class of individuals was entitled to the protection of the officials in their rights. Neither class was entitled to more, and these three officials were attempting honestly to see that such rights were preserved to each. Neither the defendant, Chrisman, nor the defendant, Oser, nor the defendant, Adams, did more than he believed to be necessary in the preservation of peace and order, honestly believing that the laws of the State were being violated. Neither has threatened nor is now threatening to unjustly prosecute the plaintiffs or any other member of their group, or to do anything that will deprive them of their rights under the Constitution and laws of the United States. The remaining officials are ready and willing to do their duty as law-enforcing officials in the enforcement of the laws, regardless of whom it may affect.

No disturbance of any kind had occurred in Connersville or Fayette County since the trial of Trent and McKee in September, 1940, until April 6 of this year. This Court found that equity did not require the issuance of a temporary injunction and, while the evidence on final hearing was much more extensive than that on the hearing on application for a temporary injunction, yet, no evidence was adduced upon final hearing which would justify the issuance of an injunction unless it was that which had to do with the occurrence of April 6. It will be recalled that each of the seventy-five (75) members arrested on that date and afterwards indicted by the grand jury of Fayette County was a resident of a State other than Indiana; that they met in Cincinnati, Ohio, a distance of approximately sixty (60) miles from Connersville, in accordance with a plan prearranged by zone servant, Rainbow, traveled to that city and began their activities in parts of the city which had theretofore been assigned to them by their zone servant. It may be significant that Sunday, especially Palm Sunday, was selected to again begin their activities in that community, after not having been active therein for many months. It is well known that that particular Sunday is more sacred

to many people than any other Sunday, with the possible exception of Easter Sunday. It may also be significant that Connersville was chosen in preference to other places much closer to their meeting place. Significance may also attach to the fact that a temporary injunction in this case had been denied, that no disturbance had occurred subsequent thereto, and that a pre-trial conference had been called for the purpose of discussing the issues, the stipulation of facts, and the date for final hearing. The date of the pre-trial conference had been fixed for April 11, and the parties notified shortly before April 6.

It must be kept in mind that the activities of this group on April 6 were planned, supervised and directed by the plaintiff, Rainbow, the zone servant; that he had attended the trial of Trent and McKee and knew of the feeling of the citizens of Connersville as to the continued activities of Jehovah's witnesses in that city; that he knew of the previous disturbances in that city occasioned by their activities; that he knew of the pendency of this action and of the refusal of this Court to issue a temporary injunction; that he, and many of the group that accompanied him to Connersville on that date, knew that this case was to be scheduled for final hearing within a short time. The conclusion is inescapable that he, and many others who accompanied him on that trip, knew, or had reason to believe, that trouble would be encountered by them, especially going in such large numbers, and on Palm Sunday.

Under the circumstances, should this Court, sitting as a court of equity, interfere with the State and county officials in the enforcement of the criminal laws of the State, and in the discharge of their duties as they see them? We think not.

In the case of Fenner *v.* Boykin, 271 U. S. 240, 46 S. Ct. 492, 70 L. Ed. 927, the Supreme Court said:

"Ex Parte Young, 209 U. S. 123 and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irrepar-

able loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the state and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of federal questions. An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some federal court. Hygrade Provision Co. *v.* Sherman, 266 U. S. 497, 500."

In the case of Watchtower Bible & Tract Society, Inc. *v.* City of Bristol, 24 Fed. Supp. 57, affirmed without opinion in 305 U. S. 572, the facts were somewhat similar to those in the instant case. In that case, the Court said:

"However, equity will ordinarily not interfere to prevent the enforcement of a criminal action even though unconstitutional. To justify interference there must be circumstances presented showing clearly that an injunction is necessary in order to afford adequate protection. * * * In the instant case, if the statute is misapplied or in conflict with the Federal Constitution these questions can be raised in the criminal prosecution trial where there is ample opportunity for a review of the federal questions presented. * * * If a federal question is presented, they may appeal to the Supreme Court of the United States. The only injury that can be found from this bill of complaint is that the complainants will not be free to go about the countryside pursuing their work of preaching their doctrine and distributing their literature. There is no irreparable damage which warrants equitable relief. * * *

"The contention that an equity court has jurisdiction because the statute is null and void as abridging the freedom of speech, the press and religion or an unreasonable exercise of police power, are not supported by bill or affidavits. The general police powers are reserved to the states and

the power to protect life and public safety, to preserve good order and the public morals, and to protect the property of its citizens, is within the limits of the states' dominion by any legislation appropriate to that end and which does not encroach upon the rights guaranteed by the Constitution. * * *

"Retention by the states of the police power necessary for their internal government has long been recognized. * * * In Whitney *v.* California, *supra*, the court pointed out that the 'equal protection clause does not take from a state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary; and that one who assails the classification must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

In the more recent case of Beal, County Attorney, et al. *v.* Missouri Pacific Railroad Corporation, 312 U. S. 45, that court approved and followed the principle announced in the case of Fenner *v.* Boykin, *supra*, and said further:

"No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. * * *

"This is especially the case where the only threatened action is the prosecution in the state courts by state officers of an alleged violation of state law, with the resulting final and authoritative determination of the disputed question whether "the act complained of is lawful or unlawful. * * * The federal courts are without jurisdiction to try alleged criminal violations of state statutes. The state courts are the final arbiters of their meaning and appropriate application, subject only to review by this court if such construction or application is appropriately challenged on constitutional grounds. Hygrade Provision Co. *v.* Sherman, supra; Fenner *v.* Boykin, 271 U. S. 240."

See, also, Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, et al. *v.* The Pullman Company, et al., —— U. S. ——, (Decided March 3, 1941.)

The question of the validity of the statutes attacked is presented to the Supreme Court of Indiana in the case appealed to that Court by the plaintiffs, Trent and McKee. If those statutes were misconstrued and misapplied, or are in conflict with the Constitution or laws of the United States, those questions can be presented to that Court in that case where there is ample opportunity for a review of all questions, including the Federal questions presented, and, if an adverse ruling is had, then the Judicial Code provides an opportunity for ultimate review by the Supreme Court of the United States.

In considering the question of whether a Federal Court should issue an injunction against the enforcement of State criminal statutes, the Supreme Court, speaking through Mr. Justice Black, in the case of Watson, et al. *v.* Buck, et al. (not yet reported) decided on May 26, 1941, said:

"Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions are not to be granted as a matter of course, even if such statutes are unconstitutional. 'No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid.' Beal *v.* Missouri Pacific Railroad Corp., 312 U. S. 45, 49. A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity. * * * For such a general statement is not the equivalent of a threat that prosecutions are to be begun so immediately, in such numbers, "and in such manner as to indicate the virtual certainty of that extraordinary injury which alone justifies equitable suspension of proceedings in criminal courts. The imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irre-

parable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified. * * * 'The general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. * * * To justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. * * * We have said that it must appear that 'the danger of irreparable loss is both great and immediate'; otherwise the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this court of federal questions.' Spielman Motor Sales Co. *v.* Dodge, 295 U. S. 89, 95-96."

Such "Exceptional circumstances" and "great and immediate" danger of irreparable loss are not here shown. It is clear that there are no exceptional circumstances in this case where the danger of irreparable loss or damage to the plaintiffs is great and immediate. It is equally clear that the equities are with the defendants. The complaint should be dismissed for want of equity, and judgment will be entered accordingly.

_____ —. _____,
Judge, United States Circuit Court of Appeals,

_____ —. _____,
Judge, United States District Court,

_____ —. _____,
Judge, United States District Court.

APPENDIX D.

Reference to Indiana Flag Laws.

Desecrating United States Flag.
Burns Ind. Stat. Anno. 1933. Sec. 10-506. Acts 1901—Chap. 164.

Flag Day Observance.

Burns Ind. Stat. Anno. 1933. Sec. 49-1505. Acts 1925—Chap. 53.

"The governor shall issue a proclamation annually setting apart and designating the fourteenth day of June as Flag Day, and recommending therein that the day be observed by the people in the display of the flag, in conducting suitable exercises having reference to the adoption of the national flag, and in such other ways as shall be in harmony with the general character of the day."

Schools to Display

Burns Ind. Stat. Anno. 1933. Sec. 28-5107, 5108. Acts 1925—Chap. 13.

"It shall be the duty of the township trustees, boards of school trustees and boards of school commissioners of the various school corporations of this State to procure a United States flag of standard wool bunting, size four (4) feet by six (6) feet for each school under their supervision."

"The township trustees, boards of school trustees and boards of school commissioners of the various school corporations in this state shall cause the United States flag to be displayed upon every public school building under their control on every school day such school is in session: Provided, That the weather conditions permit. Such trustees and boards shall establish rules and regulations for the proper care, custody and display of the flag, and when, for any cause, it is not displayed, it shall be placed conspicuously in the principal room or assembly hall of the school building."

Teachers' Oath

Burns Ind. Stat. Anno. 1933. Sec. 28-5112. Acts 1929—Chap. 16.

"Every person who applies for a license, or any renewal thereof, to teach in any of the public schools of this state, shall subscribe to the following oath or affirmation:

"I solemnly swear (or affirm) that I will support the Constitution of the United States of America, the Constitution

of the state of Indiana and the laws of the United States and the state of Indiana, and will, by precept and example, promote respect for the flag and the institutions of the United States and of the state of Indiana, reverence for law and order and undivided allegiance to the government of the United States of America."

Star Spangled Banner to be Sung

Burns Ind. Stat. Anno. 1933. Sec. 28-5111. Acts 1909—Chap. 149.

"The state board of education shall require the singing of the 'Star Spangled Banner,' in its entirety in the schools of the state of Indiana upon all patriotic occasions, and said board of education shall arrange to supply the words and music in sufficient quantity for the purposes indicated therein."

IN THE SUPREME COURT OF THE UNITED STATES
APPEAL FROM THE DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

GRACE TRENT, et al.,

vs.

LESTER HUNT, et al.

Filed August 14, 1941. Albert C. Sogemeier, Clerk.

ACKNOWLEDGMENT OF RECEIPT OF COPY OF STATEMENT.

The undersigned attorneys for Grace Trent, *et al.*, Appellants to the Supreme Court in the above cause, acknowledge receipt of a copy of the statement of Hunt *et al.*, Appellees, against the jurisdiction of the Supreme Court in the above entitled appeal.

Copy served August 14th, 1941.

SCOTT GINGM,
Attorney for Appellant,
Grace Trent, et al.